

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

LEE HARTWELL,

Plaintiff,

v.

THE CITY OF MONTGOMERY,
ALABAMA, PERSONNEL BOARD
OF THE CITY AND COUNTY OF
MONTGOMERY, ALABAMA, AND
DISTRICT CHIEF KELLY D.
GORDON, IN HIS INDIVIDUAL
CAPACITY,

Defendants.

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CIVIL ACTION NO.
2:06-CV-518-MHT

MOTION OF DEFENDANT CITY-COUNTY OF MONTGOMERY
PERSONNEL BOARD TO SUPPLEMENT
SCHEDULING ORDER

COMES NOW, City-County of Montgomery Personnel Board ("Personnel Board") by and through undersigned counsel and moves this Honorable Court to supplement its Scheduling Order (Document 23) to set a date to hear the pending Petition for Writ of Certiorari or, alternatively, to hear the Petition for Writ of Certiorari at the Pretrial Conference on April 5, 2007. As grounds for said motion, the Personnel Board shows unto the Court as follows:

1. The complaint as amended includes a Petition for Writ of Certiorari seeking to review a decision reached by the Personnel Board following a due process hearing, as well as a claim for damages under 42 USC Section 1983 against Defendant Gordon.

2. Although this matter is set for jury trial on May 14, 2003, all parties agree that the Petition for Writ of Certiorari involves strictly an issue of law. The Personnel Board's position is that the proper standard in a certiorari review of the Board's decision is only that there must be

substantial evidence in the Record of the Personnel Board's hearing to support the Board's decision.¹ See Henderson v. County Personnel Board, 695 So.2d 9, 10 (Ala. Civ. App. 1996). Necessarily, this review is limited to the evidence and questions of law presented to the Board. See id. It is not a standard that allows a reviewing court, or a jury, to re-decide the factual disputes, if any, resolved by the Board's decision, but only allows a court to decide whether there is substantial evidence in the Record to conclude that the Board could have made the decision that it did. See id. ("must, therefore, sustain the judgment of the Board if there is substantial evidence to support its finding.").

Accordingly, nothing decided by the jury will be relevant to this Court's decision on the Petition for Writ of Certiorari.

3. A pretrial conference is scheduled in this case for April 5, 2007. If it suits the Court's schedule, the Personnel Board requests that the court hear the Petition for Writ of Certiorari at that time, or at another time to be set by the Court.

s/Robert D. Segall
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Personnel Board*

¹ The Board will file a transcript of the Board hearing as well as the accompanying documents presented to the Board. This constitutes "the Record" as referenced herein.

Certificate of Service

I hereby certify that on March 19, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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